58TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { DOCUMENT No. 382.

BRIG JUNO.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS TRANSMITTING A COPY OF THE CONCLUSIONS OF LAW AND OF FACT IN THE FRENCH SPOLIATION CASES RELATING TO THE VESSEL BRIG JUNO, JOSEPH SMITH, MASTER.

JANUARY 11, 1904.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS,
Washington, D. C., January 8, 1904.

SIR: Pursuant to the order of the Court of Claims, I transmit herewith the conclusions of fact and of law filed under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings by the court relating to the vessel brig *Juno*, Joseph Smith, master.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. JOSEPH G. CANNON,
Speaker House of Representatives.

[Court of Claims. French spoliations, act of January 20, 1885, 23 Stat. L., p. 283. Decided March 23, 1903. Brig *Juno*, Joseph Smith, master.]

No. of case.	Claimant.
3137.	George R. Shepherd, administrator of Jesse Peck, *v.* The United States.
645.	Harriet E. Sebor, administratrix of Jacob Sebor, *v.* The United States.
1475.	Joseph Ogden, surviving executor of Jane Ann Ferrers, *v.* The United States.
159.	Louisa A. Starkweather, administratrix estate of Richard S. Hallett, *v.* The United States.
2012.	Walter Bowne, administrator of estate of Walter Bowne, *v.* The United States.
2013.	Walter Bowne, administrator estate of John R. Bowne, *v.* The United States.
1815.	Charles Francis Adams, administrator estate of Peter C. Brooks, *v.* The United States.
1815.	Charles F. Hunt, administrator of Joseph Russell, surviving partner of Jeffrey & Russell, *v.* The United States.
2249.	Seth P. Snow, administrator of estate of Crowell Hatch, *v.* The United States.
5200.	Joseph Ogden, administrator estate of John Ferrers, *v.* The United States.
5201.	Joseph Ogden, administrator estate of John Ferrers, *v.* The United States.

PRELIMINARY STATEMENT.

These cases were tried before the Court of Claims on the 9th day of December, 1902.

The claimants were represented by H. W. Cragin, William T. S. Curtis, Theodore J. Pickett, James Lowndes, and James Thomson, esqs., and the United States, defendants, by the Attorney-General, through his assistant in the Deparment of Justice, John W. Trainer, esq., with whom was Louis A. Pradt, esq., Assistant Attorney-General.

CONCLUSIONS OF FACT.

The court, upon the evidence and after hearing the arguments and considering same with briefs of counsel on each side, determine the facts to be as follows:

I. The brig *Juno*, James Smith, master, sailed on a commercial voyage on or about the 8th day of May, 1800, bound from New London to Barbados. While peacefully pursuing said voyage the *Juno* was seized on the high seas on or about June 5, 1800, by the French privateer, the *La Brilliant*, Captain Rufz, and taken into Guadeloupe, where both vessel and cargo were condemned by the French tribunal of commerce and prizes sitting at Basseterre, whereby said vessel and cargo became a total loss to the owners.

The grounds of condemnation, as set forth in the decree, were as follows:

First. That the sea letter of which the captain was the bearer is not signed by the officers of marine and such as prescribed by article 25 of the treaty of February 6, 1778.

Second. That he has no rôle d'équipage, but a mere agreement with the men of his crew, informal piece, not vested with the signatures of the officers of marine, such as the above-dated treaty demands.

Third. That there are no charter parties, invoices, or bills of lading.

II. The *Juno* was a duly registered vessel of the United States, of $98\frac{67}{95}$ tons burden, was built in the year 1792, and was owned by Jesse Peck, a citizen of the United States and a resident of the State of Connecticut.

III. The cargo of the *Juno* at the time of capture consisted of cattle, fowls, and five horses, but the ownership or neutrality of same is not shown.

IV. The losses by reason of the capture and condemnation of the *Juno*, so far as is shown by any competent evidence, were as follows:

The value of the vessel	$2,960.10
The freight earnings	1,579.17
Premium of insurance paid on vessel	225.00
Total	4,764.27

V. The losses of said Jesse Peck, the owner of the vessel, were as follows:

The value of the vessel	$2,960.10
The freight earnings	1,579.17
Premium of insurance paid on vessel	225.00
Total	4,764.27
Less insurance received on vessel	1,500.00
	3,264.27

VI. On June 16, 1800, the said Jesse Peck, owner of the vessel, effected insurance on same in the city of New York in the sum of $1,500 at a premium cost to him of 15 per cent.

Said policy was underwritten by the following persons, citizens of the United States, in the amounts set opposite their names:

Jacob Sebor	$500
Walter Bowne	1,000

Thereafter, on July 24, 1800, said underwriters paid to the insured the amounts underwritten by them respectively as and for a total loss on said policy.

VII. It also appears that on said date, to wit, June 16, 1800, said Jesse Peck effected insurance on the cargo on said vessel in the sum of $3,500 at a premium cost to him of 15 per cent.

Said policy was underwritten by the following persons, citizens of the United States, in the amounts set opposite their names:

Frederick De Peyster & Co	$500
Amasa Jackson	500
Knox and J. C. Shaw	500
Richard S. Hallett	1,000
Bowne & Embree	1,000

Thereafter, on July 24, 1800, said underwriters paid to the insured the amounts underwritten by them respectively as and for a total loss on said policy.

VIII. On the 13th of May, 1800, one Joseph Howland effected an insurance of $1,900 in the office of Peter C. Brooks, an insurance broker of Boston, upon 38 oxen,

on said vessel, which policy was underwritten by the following citizens of the United States, as follows:

Crowell Hatch	$500
Benjamin Homer	400
Jeffrey & Russell	500
John McLean	500

Proof of the payment of said insurance has not been shown by any competent evidence.

IX. The firm of Bowne & Embree was composed of Richard S. Hallett, Walter Bowne, John R. Bowne, and Samuel Embree. Each of said underwriters, with the exception of Samuel Embree, appear, by their legal representatives, in this case and make claim for one-fourth of the amount underwritten by said firm as set forth in Finding VII.

X. The claimants herein have produced letters of administration upon the estates of the parties for whom they appear, and have otherwise proved to the satisfaction of the court that the persons for whose estates they have filed claims are in fact the same persons who suffered loss by seizure of the *Juno*, as set forth in the preceding findings.

XI. Said claims were not embraced in the convention between the United States and the Republic of France, concluded on the 30th of April, 1803. They were not claims growing out of the acts of France allowed and paid, in whole or in part, under the provisions of the treaty between the United States and Spain concluded on the 22d of February, 1819, and they were not allowed, in whole or in part, under the provisions of the treaty between the United States and France of the 4th of July, 1831.

The claimants, in their representative capacity, are the owners of said claims, which have never been assigned, except as aforesaid.

CONCLUSIONS OF LAW.

The court decides, as conclusions of law, that said seizure and condemnation of the vessel were illegal, and the owners and insurers had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimants are entitled to the following sums from the United States:

George R. Shepherd, administrator of Jesse Peck	$3,264.27
Harriet E. Sebor, administratrix of Jacob Sebor	500.00
Walter Bowne, administrator of Walter Bowne	1,000.00

The other claimants in this case have proved no valid claims.

HOWRY, J., delivered the opinion of the court:

The brig *Juno*, Smith, master, sailed on a commercial voyage in May, 1800, bound from New London to Barbados. While peacefully pursuing her voyage the brig was seized by a French privateer and taken into Guadeloupe, where both vessel and cargo were condemned by the French tribunal of commerce and prizes sitting at Basseterre. The vessel and cargo became a total loss to the owners. The grounds assigned for the condemnation appear by the decree to have been that the sea letter was not such as prescribed by article 25 of the treaty of February 6, 1778, an informal agreement between the captain and his crew in place of the rôle d'équipage and the want of charter parties and invoices.

The spoliations of France having been surrendered by the treaty of 1800 in consideration of a release from France of her claims against the United States, we look to the proceedings of the French tribunals in the very beginning of our inquiries, when decrees are accessible, to determine the character of the alleged wrongs. But in this case the United States have set up a defense outside of the decree, alleging that a part of the cargo was contraband. This is permissible, inasmuch as the United States in assuming liability did not restrict themselves to defend for reasons only which seemed evident to the French. All defenses which those people had were not only reserved, but every other violation of the neutral's obligation remained open to inquiry.

The defense is that the presence of a few horses on board made the voyage illegal as to the ship.

After showing that a strictly accurate and satisfactory classification of contraband goods is impracticable, the Supreme Court has said that which is best supported by English and American decisions divides all merchandise into three classes. The

first consists of articles manufactured and primarily and ordinarily used for military purposes in time of war; the second, of articles which may be and are used for purposes of war or peace, according to circumstances, and the third of articles exclusively used for peaceful purposes. (*The Peterhoff*, 5 Wall., 28, citing Lawrence's Wheat., 772–776, notes; *The Commercen*, 1 Wheat., 382; Dana's Wheat., 629, note; Parson's Mar. Law, 93–94.)

"Merchandise of the first class, destined to a belligerent country or place occupied by the army or navy of a belligerent, is always contraband; merchandise of the second class is contraband only when actually destined to the military or naval use of a belligerent; while merchandise of the third class is not contraband at all, though liable to seizure and condemnation for violation of blockade or siege." (*The Peterhoff, supra.*)

The true test as to articles in the second class in the absence of treaty stipulation is the underlying object of the shipment. As in the case of provisions, for instance, where the real purpose is the supply of the enemy's force, the voyage with such freight and going to a hostile port to supply the military needs of the belligerent army or navy is illegal. (*The Commercen*, 1 Wheat., 38; Halleck Int. L., 587.)

Writers on international law say that the probable use of articles is inferred from their known destination. Halleck, *ante*, 586, quotes Kent as saying that the nature and quality of the port to which the articles are going is not an irrational test. If the port be a general commercial one, it is presumed that the articles are intended for civil use; but if the predominating character of the place be that of a port of naval or military equipment it will be presumed that the articles were going for military use. * * *

"It is not an injurious rule which deduces the final use from the immediate destination."

The same principle, says the same writer, is laid down by Sir William Scott, but the author further says that the principle does not seem to have been followed out in the judge's decisions.

In a recent case we held that the weight of authority preponderates for the proposition that at the time of the seizure then being considered horses were presumptively deemed contraband according to the usage of most nations, and certainly so according to the understanding between this country and France, as far as it may be said any understanding existed between the two countries on the subject at that time.

It was further held that aside from any absolute rule the presumption was, in the absence of proof, that a consignment of horses constituting a large part of the cargo of a small vessel bound for an enemy's port was destined for the military use of the belligerent. (*The Schooner Atlantic*, 37 C. Cls. R., 17.)

It was shown, however, in that case that though the treaty with France of February 6, 1778 (8 Stats., art. 24), declared horses to be contraband, the treaty was abrogated by an act of the American Congress of July 7, 1798, so that the treaty did not govern. We adhere to the result then reached, fully satisfied of its correctness; but here announce a more explicit rule where horses are a part of the freight.

Whether horses, being useful for purposes of war or peace according to circumstances, are or are not contraband in the absence of treaty stipulation, should be determined by the purpose of the shipment and the objects to be attained in the transportation of such freight. The circumstances must determine the character of the voyage, and each case must turn upon the purpose, if in proof, and next upon the presumptions arising out of the conditions suggested by the evidence. Destination and particulars surrounding the transit ought, if horses be a part of the cargo, to determine the lawfulness of the undertaking or the illegality of the voyage.

The conflicting specifications as to what constituted contraband about the time of these seizures seem to us to make the rule adopted in *The Peterhoff, supra*, fairly applicable where the question arises as to horses. They are articles which may be and are used for purposes of peace as well as war. A rule which does not condemn such freight without something to infer an unlawful purpose in their transit is most reasonable and in line with the enunciations of many writers on international law who have considered the subject. Bynkershoek was of the number who opposed admission into the list of contraband articles which had a promiscuous use in peace and war, while Bluntschli, Hübner, and Hautefeuille make distinctions, treating the prohibition as to horses to cavalry mounts, but leaving it undetermined as to the use intended by the transportation. Some writers are on the other side of the question because of the practice of different nations at various times.

The books abundantly show that the same nation, in its conventions with other powers at the same era, has sometimes placed an article in the category of contraband and sometimes taken it out. A recent English writer has shown that, since

the commencement of her naval supremacy, Great Britain has with fair consistency adhered to the doctrine of Grotius—from whom the classification adopted by the Supreme Court in *The Peterhoff* was obtained—and treats the discussions of Heineccius, Vattel, Valin, and other eighteenth century writers as immaterial, because of two distinct doctrines existing among states, one identical with that of Grotius, whilst the other, barring things ancipitus usus entirely, recognizing only arms and munitions of war as contraband. (Risley's Law of War, 227.) In view of the classification adopted by the Supreme Court, and the fact that horses were not contraband in any operative treaty between this country and France at the time mentioned, and because of the extraordinary contradictions and inconsistencies defining contraband, we deem it the safer course to regard the rule declared in the case cited as authoritative where it relates to horses. The purpose to carry them to a belligerent for military use must be inferred from all the proof in the case before a transit of such freight can be regarded as illegal.

Barbados was not in a state of siege at the time of this capture, nor was it under blockade. It may have been garrisoned, but the record does not show it, nor does accessible history tell us. There is nothing to indicate that the island predominated as a port of naval or military equipment, although it may have been the rendezvous of British shipping. In the absence of proof, the presumption can not be indulged under these circumstances that a small, unsubstantial part of the cargo like five horses (shown by the manifest) was intended for military use. Assistance of such limited nature and the inconsequential character of such possible service rebut any presumption that the articles were going, with a highly probable destination, to military use. Such a small number of horses would constitute "a sort of evanescent quantity," of which no account can be taken; certainly not enough to condemn the ship for carrying contrabrand to the enemy for his military necessities.

The seizure was not lawful as to the ship, and the owners had a valid claim of indemnity as to it. But the decree establishes that there was no documentation on board the vessel to show neutrality of the cargo, nor yet ownership. The recitals of the decree not being controverted, and the decree having been rendered after the abrogation of the treaty of 1778, the condemnation of the cargo was valid. (*The Betsey*, Wyman, 36 C. Cls. R., 256.)

The findings of fact, with a copy of this opinion, will be certified to Congress.

BY THE COURT.

Filed March 23, 1903.
A true copy.
Test this 8th day of January, 1904.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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